STATUTES — CONSTRUCTION—"CITIZENS" HELD TO MEAN "QUALIFIED VOTERS."—A municipal charter provided that no license for the sale of intoxicating liquors should be granted unless the application for a license was accompanied by a petition "signed by two-thirds of the citizens of said town, asking for such license." Defendant had presented a petition signed by two-thirds of the qualified voters of the town, though not by two-thirds of the inhabitants, and had obtained a license. In an action to restrain defendant from selling intoxicating liquor, because he had not complied with the charter, *Held*, that the license so obtained was sufficient. *Wray* v. *Harrison* (1902), — Ga. — , 42 S. E. Rep. 351.

The court held that while the word "citizens" is often used to include males and females, adults and infants, yet when used in a statute with reference to governmental affairs, it must be presumed to include those only who are clothed with the power of controlling civil and political functions.

SURETYSHIP—SHERIFF'S BOND.—In a sheriff's official bond the name of the sheriff and his sureties appeared in the body of the instrument. The sureties signed the bond, but the sheriff failed to do so. *Held*, that the sureties were nevertheless liable. *McKissack* v. *McClendon* (1902), — Ala. —, 16 So. Rep. 486.

Generally speaking the surety's obligation is accessory, and its extent depends upon the obligation of the principal. To avoid the results of the application of this general rule, the court relied upon a code provision, to the effect that: "Whenever any officer, required by law to give an official bond, acts under a bond which is not in the penalty, or conditioned, or with the securities prescribed by law, the bond is valid and binding on the obligors therein, as the official bond executed according to law." It is obvious that to extend this code provision to the facts stated, is to place upon it an extravagant construction not warranted by its plain terms.

The conclusion of the court is undoubtedly correct; but in arriving at its conclusion, the code was distorted, as it seems, unnecessarily. For irrespective of any statutory provision the great weight of authority is, that where the surety makes no express condition that the principal shall sign the bond, the surety is liable in case the principal fails to do so. *State* v. *Bowman*, 10 Ohio, 445. This rule, while it is supported by the weight of authority, is not undisputed. *Bean* v. *Parker*, 17 Mass. 591. In Massachusetts, Michigan, Indiana, Minnesota, California, Louisiana, and Connecticut, the surety is released if the principal does not sign the bond; but the rule as given is adhered to in the following states: New York, Pennsylvania, Illinois, Ohio, Virginia, Wisconsin, Kansas, Nebraska, Oregon, Texas, Montana, Tennessee, and Maine. This rule works no special hardship upon the sureties, for their right to indemnity from the principal is not affected by the failure of the principal to sign the bond. *Trustees of Schools* v. *Sheik*, 119 Ill. 579; *Harnsberger* v. *Yancey*, 33 Gratt. (Va.) 527.

SURETYSHIP—HUSBAND AND WIFE—MORTGAGES.—A husband and wife joined in the execution of a mortgage of her separate estate for the purpose of securing the husband's debt. *Held*, that she was not in the position of a surety and that a novation would not release her property. *Magoffin* v. *Boyle Nat'l Bank of Danville* (1902), — Ky. —, 69 S. W. Rep 702.

The rule, as laid down by text writers and all the courts except those of Kentucky, is that, where the wife mortgages her separate estate to secure the debt of her husband, she stands in the position of a surety and her property is discharged by an act that would release a surety. The only precedent for the

principal case is in former Kentucky decisions. *Hobson* v. *Hobson Exrs.*, 8 Bush, 665; *Lane* v. *Bank*, 21 S. W. 756; *Tipton* v. *Trader's Bank*, 33 S. W. 205; *New Farmer's Bank* v. *Blythe*, 53 S. W. 409.

The principle of these cases is not apparent. To bind the wife's separate estate absolutely, when her express intention was to become only a surety, and to deprive her of the benefits of the laws relating to the discharge of a surety, is manifestly a restriction incident to coverture not contemplated by the various Married Women's Property Acts. If she is not a surety, the question naturally arises: In what relation does she stand? And to this question the Kentucky cases afford no satisfactory answer. In *Tipton* v. *Bank*, *supra*, the court attempts to define her position in the following words: "Her property is a security or pledge for the payment of her husband's debts yet she is not the surety of her husband." Upon whatever distinction there is in this explanation, the Kentucky court bases its decision. Opposed to it are the text writers and all other state courts that have passed upon the question. BRANDT, SURETYSHIP AND GUARANTY, 35; JONES, MORTGAGES, 114; AM. & ENG. ENC. LAW, p 720; 20 CENT. LAW JOURNAL, 205.

As there is no peculiar statutory provision in Kentucky relating to this question, it is difficult to account for the position of the Kentucky court, standing as it does, alone in its holding.

TAXATION—GOOD WILL OF A PARTNERSHIP.—The Indiana constitution required that the legislature should provide for a uniform and equal rate of taxation on all property not expressly exempted by law. Defendant partnership published a newspaper, and one item of its assessment was for the good will. *Held*, that the good will was not taxable in this case. *Hart* v. *Smith* (1902), — Ind. —, 64 N. E. Rep. 661.

The court held that the good will was not, in and of itself, property within the meaning of the constitutional mandate, and while it might be taxed since the law protected it, yet *a priori* it was not included within the meaning of the constitutional provision, nor was it property in such a sense that the legislative act must be held to have intended to include it, in the absence of express words to that effect. Further, it was not mentioned in the enumeration of the kinds of personal property in the legislative provision, and the maxim, "*Expressio unius est exclusio alterius*," applies.

This would seem the first case where this precise point has been raised. That good will is an asset, has value, and is salable, is abundantly supported by the authorities. *Bininger* v. *Clark*, 60 Barb. 113; *Snyder Manufacturing Co.* v. *Snyder*, 54 Ohio St. 86, 43 N. E. Rep. 325; *Wallingford, Shamp & Co.* v. *Burr*, 17 Neb. 137; *Barber* v. *Conn. Mut. Life Ins. Co.* 15 Fed. Rep. 312. (See note on last case for entire subject of good will.) Franchises, equally intangible, are taxed. 25 AMER. AND ENG. ENCY. OF LAW, 631. By analogy it would seem that good will is taxable also. Indeed, this is admitted by a dictum in the case.

TRIAL—EXPRESSION BY JUDGE OF HIS OPINION AS TO THE FACTS.—The code of North Carolina forbids a judge, in charging the jury, to express "an opinion whether a fact is fully or sufficiently proven." On the trial of an action against a telegraph company to recover damages for alleged negligence in delivering a message, there was some claim that the messenger boy had not done his duty. The court instructed the jury "that it was the duty of the telegraph company to use reasonable diligence in the transmission of all messages committed to it, and that by the term 'reasonable' or 'due' diligence was not meant the speed of lightning (except in the transmission of the message over the wire) on the one hand, nor the proverbial slowness of the